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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2649 of 1998

with

SPECIAL CIVIL APPLICATION No 487 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

KABHAIBHAI CHHITABHAI BARIYA

Versus

G S R T CORPORATION

Appearance:

1. Special Civil Application No. 2649 of 1998

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

2. Special Civil Application No 487 of 1998

MR YS LAKHANI for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/06/98

ORAL JUDGEMENT

Rule. Mr. Y.S.Lakhani, learned advocate for the respondent in SCA No.2649 of 1998 waives service of Rule on behalf of respondent and Mr.H.K.Rathod learned advocate. for the respondent in SCA No. 487 of 1998 waives service of Rule on behalf of the respondent.

2. SCA No.487 of 1998 is filed by the employer GSRTC to challenge the award passed by the Labour Court, Baroda in Ref.No. 666 of 1995 on 31.3.1997; whereas SCA No. 2649 of 1998 is filed by the workman Kabhaibhai Chhitabhai Bariya to implement the said award . As both these petitions are pertaining to one and the same award, they are heard together and are being disposed of by this common order.

3. Shri Kabhaibhai Bariya was working as driver with the Divisional Controller, GSRTC, Baroda. On 20.1.1995 when he was on his duty, he was directed by his superiors to take the bus on Dabhoi-Karolipura route which he refused and went away. Consequently, the GSRTC had to engage another driver to take the said bus and said driver was to be paid Rs.400/- towards his overtime duty. Thereafter the workman was served with a charge sheet on 6.3.95 charging him about negligence in his duties by refusing to take the bus on Dabhoi-Karolipura route and causing loss of Rs. 400/- to the GSRTC. In response to the said charge sheet the workman gave a reply admitting his fault and contended that during those days the marriage ceremony of his son was to take place and because of that tension, he could not accept said suggestion of his superiors and he has committed a

mistake and he assured his superiors that he will not repeat the said mistake and therefore, he may be forgiven. As the delinquent workman had admitted the charges levelled against him, the inquiry officer held him guilty of the charges levelled against him and by an order dated 19.5.1995 the petitioner was dismissed from service

4. Being aggrieved by the said decision the workman raised an industrial dispute and on account of the same Ref. No. 666 of 1995 was made before the Labour Court, Baroda. During the hearing of the said reference, legality of the departmental inquiry was not challenged before the Labour Court but only submissions were made on the point of quantum of sentence. The Labour Court found that the quantum of punishment of dismissal from service was excessive. The Labour Court therefore, interfered with the said sentence and passed an award to reinstate the workmen with 80 percent of back wages by the order dated 31.1.97.

5. As said award of the Labour Court passed on 31.1.97, is not implemented the workman has filed SCA No. 2649 of 1998; whereas the employer-GSRTC has filed SCA No. 487 of 1998 to challenge the award passed by the Labour Court. It is contended by the respondent-employer that there was no justification for the Labour Court to interfere with the quantum of punishment and that the order of dismissal ought to have maintained and this Court therefore, should interfere with the award of Labour Court by allowing the SCA No. 487 of 1998.

6. There is no dispute of the fact that the workman-driver had refused to go on his duties on 23.1.95. The driver has accepted his refusal but has tried to explain by saying that as he had been extremely busy with the marriage ceremony of his son, he committed said wrong. He has shown his repentance before the inquiry officer and has also promised not to repeat same in future. L.A. for the respondent GSRTC has drawn my attention to the history sheet of the workman and said history sheet of the workman shows that the workman in question had committed similar defaults on 8 occasions between 1989 to 1995. On three occasions he had not reported for his duties as a driver. In all these defaults he was charge sheeted and he has already been punished by awarding punishment of stopping of increments, payment of fine and other punishment. The

delinquent in question has tried to explain his conduct and the explanation of him could not be said to be false one in view of the material on record. Therefore, in the circumstances, merely because he had refused to go on a particular route on that day, it could not be said that punishment of dismissal from service, was proper and adequate punishment as punishment of such nature would not result into deprivation of livelihood of the workman and his family members. Therefore, in the circumstances, the Labour Court was quite justified in holding that punishment of dismissal from service was on higher side and that the same should be interfered with. But the Labour Court has denied only 20 percent backwages to the workman. So, by way of punishment the Labour Court has only denied 20 percent of pay. The service history sheet of the workman shows that on earlier occasions also he had remained absent from duties and though he was given light punishment, he had not shown desired improvement. Therefore, in the circumstances, if he is denied 60 percent of his pay from the date of dismissal till the date of passing of the award by the Labour Court, it would meet the ends of justice. I therefore, partly allow the petition filed by the respondent GSRTC and I order that instead of denying of 20 percent pay, the workman is to be reinstated by denial of 60 percent of his pay from the date of dismissal till the date of publishing the award by the Labour Court. With this modification in the award passed by the Labour Court, Baroda in Ref.No. 666 of 1995 on 31.3.97, SCA No. 487 of 1998 is to be disposed of and the Rule issued in the said petition is made absolute to the aforesaid extent.

7. In view of the modification of the award passed by the Labour Court, Baroda the respondent GSRTC is to implement, execute and operate the said award within four weeks from today. The respondent-GSRTC should pay arrears to the workman as per the modified award as well as back wages from the date of publication of award till reinstatement of him within 8 weeks from today. Rule is made absolute in SCA No.26449 of 1998 accordingly. No order as to costs in both the SCAs.

(S.D.Pandit.J)